IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7681 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARAMKRUPA KELVANI MANDAL

Versus

HANSABEN K THAKKAR

Appearance:

MR PARESH M DAVE for Petitioner

MR MAYUR RANA for MR RK MISHRA for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/01/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The facts of this case briefly stated are that the respondent No.1 is a teacher in the school run by the

petitioner. During the examination time the respondent No.1 amongst other teachers was sent to one Kanak Gujarati Primary School in the month of February, 1990 for the purpose of carrying out examination supervision work in the said institution. On 3.2.1990, the first respondent teacher quarrelled with her colleague Ms.Mohiniben Trivedi in the premises of Kanak Gujarati Primary School. Ms.Mohini is also a teacher in the school run by the petitioner. The principal of Kanak Gujarati Primary School reported to the petitioner about this incident. The petitioner school sent memo to the first respondent inter alia seeking her explanation. However, she did not accept the charge and also abused other teacher involved as well as principal. Ultimately a show cause notice was issued on 25.4.1990 to the respondent No.1 under the provisions of Section 40B of the Bombay Primary Education Act, 1947. The respondent No.1 filed reply to that show cause notice on 3.5.1990. The management was not satisfied with the explanation of the first respondent and accordingly an Inquiry Officer was appointed to hold the inquiry. The Inquiry Officer though called upon first respondent to remain present in the inquiry proceedings on various occasions but she never remained present. The Inquiry Officer after completing the inquiry submitted the report to the petitioner. The Inquiry Officer found the alleged misconduct against the respondent No.1 is proved. The second show cause notice was given to the respondent No.1 and inquiry report was enclosed to it. At this stage, the respondent No.1 has filed application No.238 of 1990 before the Tribunal and therein she also prayed for grant of interim relief. Ex-parte interim relief has been granted in favour of the respondent No.1 by the Tribunal under its order at Annexure-C. The petitioner instead of going to the Tribunal for vacation of that order filed this petition. The petitioner has challenged the very jurisdiction of the Tribunal to entertain application of respondent No.1. This court has been pleased to admit the petition and by way of interim relief operation, implementation and execution of the interim order at Annexure-C was ordered to be stayed with the condition that the petitioner shall not pass final order in the departmental inquiry. This interim relief granted by this court continues till this day.

#. The learned counsel for the petitioner raised contention re. jurisdiction of Tribunal to entertain the application filed by respondent No.1 but I do not consider it to be necessary to give any decision on this question as the application is pending in the Tribunal and first it has to give decision on this point.

However, I find sufficient merits in the contention of the learned counsel for the petitioner that in such matters the Tribunal should not have granted the ex-parte interim relief.

#. I fail to see any justification in the approach of the Tribunal to grant ex-parte interim relief in favour of respondent No.1 at a stage where no final decision is taken by the petitioner in the department inquiry. The learned Tribunal was not justified to pass an order preempting some adverse decision in the inquiry against the respondent No.1. This matter is squarely covered by the decision of the apex court hence no further discussion needs to be made on this point. Their Lordships of the Hon'ble Supreme Court in the case of Air India Ltd. Vs. Yogeshwar Raj reported in 2000(5) SCC 467 held that interference in the departmental inquiry at the interlocutory stage is not called for by the courts or tribunals. The reference may have to the another decision of Hon'ble Supreme Court in the case of Sakti, through its Director, Rampachodavaram, E.G. Distt., A.P. vs. R.K.Ragala & Ors., 1996(7) SCC 166 wherein it is held that the intervention at the show cause stage by the Tribunal or court is illegal.

In the result, the Special Civil Application succeeds and the same is allowed. The order of the Tribunal at Annexure-C is hereby quashed and set aside. Rule is made absolute. The respondent No.1 is directed to pay costs of this petition to the petitioner which is quantified to Rs.2,000/=. The Tribunal is directed to decide the application filed by the respondent No.1 within a period of 2 months from the date of the receipt of the writ of this order.

(S.K.Keshote, J.)

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